

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, v. QWEST CORPORATION AND MCI WORLDCOM COMMUNICATIONS, INC., Respondents.	DOCKET NO. FCU-02-5 (C-02-22)
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**ORDER MODIFYING THE PROCEDURAL SCHEDULE AND GRANTING THE
MOTION FOR SUBPOENAS WITH MODIFICATIONS**

(Issued October 1, 2002)

On September 19, 2002, an order modifying the procedural schedule was issued. On September 20, 2002, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a motion for modification of the procedural schedule, and asked that either the paragraph allowing Qwest Corporation (Qwest) to file additional information be stricken, or that the Consumer Advocate be given the opportunity to file responsive testimony. On September 24, 2002, Qwest filed a response, and requested that the undersigned reject the Consumer Advocate's motion that it not be allowed to file additional testimony. On September 26, 2002,

WorldCom Communications, Inc. (WorldCom), filed an emergency request for additional time, asking for a five-day extension of the time to file its direct testimony.

Although the procedural schedule in this case has been changed several times, the undersigned will modify the schedule as outlined below. However, the parties are on notice that there will be no further changes of the hearing date, which is set for November 21, 2002. In addition, future motions for modification of the procedural schedule will not be viewed with favor unless the requesting party has already discussed the modification with opposing counsel and reached agreement regarding the modification, and so long as the modification will not require a change in the hearing date.

On September 24, 2002, Qwest filed a motion for the issuance of subpoenas to the Mark Seed Company and OneStar Long Distance, Inc. (OneStar). On September 26, 2002, the Consumer Advocate filed a response opposing the issuance of the requested subpoenas.

In its motion at page three, Qwest stated that the Mark Seed Company had attached unilateral recordings of telephone discussions to its testimony filed June 24, 2002. It also referred to an attached Exhibit 1 on page six of the motion, and an attached Exhibit 3 on page seven of the motion. A search of the Board Records Center files showed that the Records Center has none of these three items. If the parties think these items are part of the record in this case, they must file copies with the Records Center.

In its motion for subpoenas, Qwest listed the documents it needed with reasonable specificity, except with respect to Request No. 3, explained why it needed the documents, and recited its version of the efforts it had made to voluntarily obtain the documents. In its response, the Consumer Advocate recited its version of efforts Qwest had made to obtain the documents and the Consumer Advocate's actions with respect to those efforts. The Consumer Advocate also argued that there is no reason why the documents would add anything of value to the narrative Qwest has already supplied, would not be the best evidence, Qwest could have made its own notes regarding contacts, and the communications could not exonerate Qwest.

Iowa Code § 17A.13 (2001) discusses discovery and subpoenas in the context of administrative cases, and Iowa Code § 476.2 further grants the Board the authority to issue subpoenas. There is a delicate balance between protecting a consumer who files a complaint against a utility from unreasonable, duplicative, and burdensome requests for additional information, and allowing the utility to defend itself. Although it must be remembered that the Mark Seed Company and OneStar are not parties to this case, Ms. Kelly Terpstra of the Mark Seed Company is a key witness on behalf of the Consumer Advocate. Qwest is entitled to defend itself, and is entitled to discovery as in civil actions. Iowa Code § 17A.13. As the Consumer Advocate pointed out in its response, appropriate restrictions may be imposed so that requests for information are not burdensome or duplicative. Iowa R. Civ. P. 1.504. However,

the reasons given by the Consumer Advocate in its response do not provide a basis for denial of the request for subpoenas.

Request No. 3 to the Mark Seed Company asks for the following information:

"Any notes or documents made by Mark Seed which comment upon or analyze Qwest's chronology submitted in this proceeding." This request is overbroad, could be burdensome, and could easily encompass items having no relevance to this case. Therefore, this request will be denied as stated. However, in its request at page six, Qwest stated that Ms. Terpstra mentioned certain notes referring to "dates in which certain discussions had occurred and perhaps other information relevant to those discussions," that had not been included as part of her testimony. Production of these notes would not appear to be burdensome, could be relevant, and should be produced. Therefore, Request No. 3 will be reframed to include only such notes. In addition, it would not be fair if the Consumer Advocate had such notes in its possession, refused to provide them to Qwest, and then introduced the notes as evidence in this case at some later date. Therefore, this order will provide that the Consumer Advocate may not introduce copies of any other notes prepared by Mark Seed not already introduced in this case, unless it provides copies of such notes to Qwest on or before October 15, 2002.

Request No. 2 to OneStar is for electronic communications or other documents between OneStar and Qwest and WorldCom. Ordinarily, this request would be denied, because Qwest would already have this information. However,

Qwest stated in its motion that its internal database has purged the electronic exchanges and Qwest no longer has access to them. Therefore, it is reasonable to request them from OneStar.

To the extent the remaining requests relate to information not previously submitted to the Board, they are reasonable, may lead to the discovery of relevant evidence, should not be burdensome, and Qwest has unsuccessfully attempted to obtain the information voluntarily. Since the Mark Seed Company is apparently unrepresented, it is important to clarify that the subpoena request relates to documents of the Mark Seed Company. It does not relate to any personal documents regarding this case that may be in the possession of any of Mark Seed's officers or employees, unless the Consumer Advocate plans to introduce them into the record in this case. If the Consumer Advocate plans to do so, it must provide the documents to Qwest on or before October 15, 2002.

In its motion, Qwest alleged the Consumer Advocate advised its attorneys not to communicate directly with the Mark Seed Company orally, and to only communicate in writing. The Consumer Advocate is not representing Mark Seed. Therefore, it has no authority to prevent Qwest from communicating directly with the Mark Seed Company.

In order to reduce the burden on the Mark Seed Company, if the Consumer Advocate has any of the documents listed in the motion for subpoenas as modified below, to the extent it has not already provided them to Qwest or introduced them

into the record, it should provide them to Qwest and notify Mark Seed, so that Mark Seed does not have to produce the documents to Qwest.

Many documents have already been filed by the Mark Seed Company or the Consumer Advocate, either in this formal case, or in the prior informal complaint case. The issuance of the subpoenas only applies to the extent Mark Seed or the Consumer Advocate has not already submitted the documents to the Board, because any documents so submitted are available to Qwest in the Board Records Center file.

IT IS THEREFORE ORDERED:

1. The procedural schedule issued September 19, 2002, is hereby modified as follows:
 - a. WorldCom must file its prefiled testimony on or before October 2, 2002;
 - b. The Consumer Advocate must file responsive testimony to the testimony filed by WorldCom, if any, on or before October 18, 2002;
 - c. If Qwest wishes to file additional testimony responding to that filed by WorldCom, it must do so on or before October 18, 2002;
 - d. If Qwest wishes to file additional testimony as a result of its subpoena requests, it must do so on or before October 24, 2002;
 - e. If the Consumer Advocate wishes to file responsive testimony to the additional testimony filed by Qwest, it must do so on or before November 8, 2002;

f. Any party who wishes may file a prehearing brief on or before November 18, 2002; and

g. A hearing for the presentation of evidence and the cross-examination of witnesses will be held in the Utilities Board hearing room, 350 Maple Street, Des Moines, Iowa, on Thursday, November 21, 2002, beginning at 10 a.m. The parties should plan to come to the hearing room at 9:45 a.m. to mark exhibits. If a party's exhibits are extensive, the party should provide an index listing the exhibits to the undersigned, opposing counsel, and the court reporter. Each party must provide a copy of its prepared testimony and all exhibits to the court reporter.

Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

2. The motion for subpoenas filed by Qwest on September 24, 2002, is granted as modified below.

a. The motion is granted only to the extent the documents have not already been filed in this proceeding or the informal complaint case by the Mark Seed Company or the Consumer Advocate.

b. To reduce the burden on the Mark Seed Company, if the Consumer Advocate has any of the documents listed in the motion for subpoenas as modified below, to the extent it has not already provided them

to Qwest or introduced them into the record, it must provide them to Qwest and notify Mark Seed, so that Mark Seed does not have to provide the documents to Qwest.

c. The motion is granted as to documents of the Mark Seed Company. It does not apply to personal documents that may be in the possession of any Mark Seed officer or employee. However, if the Consumer Advocate plans to introduce any such personal document into the record in this case, it must provide such document to Qwest on or before October 15, 2002.

d. The motion is granted with respect to Mark Seed Company Request Nos. 1 and 2, and with respect to OneStar Request Nos. 1, 2, and 3.

e. Mark Seed Company Request No. 3 is denied as stated in Qwest's motion, but is reframed as follows:

The notes referred to by Ms. Terpstra in her conversation with Qwest's counsel, identified in Qwest's motion, page six, as "certain notes that were not attached and which referenced dates in which certain discussions had occurred and perhaps other information relevant to those discussions," to the extent not previously filed with the Board.

f. If the Consumer Advocate has the notes referred to in paragraph "e" in its possession, it should provide them to Qwest within seven days of the issuance of this order, and notify Mark Seed, so that Mark Seed does not have

to provide the notes to Qwest. The Consumer Advocate may not introduce copies of any other notes prepared by Mark Seed with respect to Qwest and the events of this case, unless it provides copies of such notes to Qwest on or before October 15, 2002.

3. Subpoenas duces tecum will be issued as detailed above, and the Mark Seed Company and OneStar will be directed to provide the subpoenaed documents on or before October 15, 2002.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 1st day of October, 2002.